

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**SPECIAL CIVIL APPLICATION No. 1981 of 2006****For Approval and Signature:****HONOURABLE MR.JUSTICE ANIL R. DAVE
HONOURABLE MR.JUSTICE K.A.PUJ**

1	Whether Reporters of Local Papers may be allowed to see the judgment ?
2	To be referred to the Reporter or not ?
3	Whether their Lordships wish to see the fair copy of the judgment ?
4	Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?
5	Whether it is to be circulated to the civil judge ?

**UM CABLES LTD - Petitioner
Versus
UNION OF INDIA & 3 - Respondents**

Appearance :

MR PR NANAVALI for Petitioner.

MR JITENDRA MALKAN for Respondents.

**CORAM : HONOURABLE MR.JUSTICE ANIL R. DAVE
and
HONOURABLE MR.JUSTICE K.A.PUJ**

Date : 08/03/2006

ORAL JUDGMENT

(Per : HONOURABLE MR.JUSTICE ANIL R. DAVE)

Rule. Service of rule is waived by learned Assistant Solicitor General Mr. Malkan for the respondents. At the request of the learned advocates, the petition is finally heard.

2. The petitioner is a manufacturer of Optical Fiber Cable. Upto now Optical Fiber Cable manufactured by the petitioner is classified under Chapter No. 8544 of Central Excise Tariff Act. The said fact is not in dispute. Upto now, necessary Certificates have been issued by the respondent authorities to the effect that the said product is classified under Chapter No. 8544 and the product has also been assessed accordingly.

3. The petitioner has been aggrieved because

a show-cause notice dated 15.02.2006 has been served upon it and concessional duty Certificate showing that the goods manufactured by it is under Excise Tariff heading No. 8544 is not being supplied to it.

4. It is pertinent to note that in the past, the petitioner had approached this Court by filing Special Civil Application No. 19506 of 2005 when without issuance of any show-cause notice, the respondent authorities had changed classification of the product. The said petition had been allowed by quashing the communications whereby classification of the product manufactured by the petitioner was sought to be changed.

5. It is the case of the petitioner that the petitioner's product be classified under Chapter 8544 under Central Excise Tariff Act as admittedly, the said product has been

classified in the said class by the respondent authorities since long. It is the petitioner's case that the petitioner is likely to get the said material which is required to be cleared and for that purpose, necessary Certificate is required to be given by the respondent authorities showing that the Optical Fiber Cable is classified in Chapter 8544 under Central Excise Tariff Act.

6. In pursuance of notice issued by this Court, Mr. Malkan has appeared and submitted that because of an order passed by the Tribunal in the case of Optel Telecommunication Limited V/s. Commissioner of Central Excise, Bhopal, 2005 (186) E.L.T. 109 (Tri. - Del.), the product in question is required to be classified in Chapter 9001. As the respondent authorities propose to make change in the said classification, a show-cause notice dated 15.02.2006 has already been given to the

petitioner but the said show-cause notice has not been replied by the petitioner so far. In the circumstances, it has been submitted by Mr. Malkan that the petitioner is not entitled to get any Certificate on the basis that the product in question falls in Chapter 8544. It has been further submitted by him that till the show-cause notice is replied by the petitioner and a final decision is taken adjudicating the dispute, the petitioner cannot be given any Certificate. He has, therefore, submitted that the petition deserves to be dismissed. He has further submitted that simply because the product had been classified in Chapter 8544 in the past, there is no obligation on the part of the respondent authorities to continue the said classification and it is always open to the respondent authorities to change the classification if required. So as to show that the classification can be changed, he has relied upon the judgment delivered by the

Hon'ble Supreme Court in the case of Commissioner V/s. D.S. Food Limited passed in Civil Appeal No. 1944 of 2003 on 08.11.2003 (referred to at page A-82 of Vol. 157 of Excise Law Times).

7. We have heard the learned advocates at length and have also gone through the record pertaining to the case.

8. What is not in dispute is that the Optical Fiber Cable has been classified in Chapter 8544 till today in the case of the petitioner. In that past, when without affording any opportunity to the petitioner, an effort was being made to change the classification, the petitioner had filed Special Civil Application No. 19506 of 2005 which had been allowed by this Court on 27.10.2005 as stated hereinabove and the change which the respondent authorities wanted to

effect had not been permitted.

9. It is not in dispute that the show-cause notice issued to the petitioner has not been replied so far. If the petitioner gives reply to the show-cause notice, the respondent authorities will have to hear the petitioner and adjudicate upon the subject matter of the show-cause notice and if ultimately, it is thought that the product in question is to be classified in Chapter 9001, an order will have to be passed by the respondent authorities to that effect. Till such an order is passed, in our opinion, the classification which has already been made can not be changed and a Certificate can be given to the petitioner with a proviso that if ultimately, upon hearing the petitioner in pursuance of the show-cause notice, a decision is taken to change the classification of the product, the authorities may finally assess the product as if the

product is under Chapter 9001. Thus it would be open to the authorities to assess the product as if it belongs to a different class if a decision is taken to change the classification. Till no decision is taken with regard to change of classification, in our opinion, the product should be classified as it is being done since long i.e. it should be classified in Chapter 8544 by the respondent authorities.

10. Looking to the facts of the case, it is directed that the petitioner's application dated 10.01.2006 addressed to respondent No. 2 shall be entertained as soon as possible and necessary certificate as prayed for shall be issued to the petitioner within 10 days from the receipt of this order by respondent No. 2 subject to final adjudication.

11. In view of the above direction, the

petition stands disposed of as allowed. Rule is made absolute to the above extent with no order as to costs. Direct service is permitted.

12. At this stage, a request is made by learned Asst. Solicitor General Mr. Malkan for stay of this order for four weeks. It does not appear to be reasonable and therefore the request is not granted.

[A.R. DAVE, J.] [K.A. PUJ, J.]

Savariya